IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT

S.B.Civil Writ Petition No.3118/1990

LRs. of Netram and another.

vs.

Board of Revenue and others.

Date : 26.7.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr.NS Acharya, for the petitioners.
Mr.M Shrimali, for the respondent no.6.
Mr.SN Tiwari, Dy.GA, for the respondents.

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BY THE COURT :

REPORTABLE

Heard learned counsel for the parties.

The petitioners being aggrieved against the judgment and decree of the Board of Revenue dated 6.9.1990 have preferred this writ petition.

Brief facts of the case are that plaintiffs Net Ram and Madan Lal filed suit for declaration and

injunction against defendants Chandu and Nanak in the Court of Assistant Collector, Nohar on 20.4.1965. According to the plaintiffs, who are petitioners in this writ petition, a big land of khasra no.323 is situated in Village Rohi in Tehsil Nohar. On one part of this land which was numbered as 4 Min measuring 25 bighas 12 biswas, the plaintiffs were in cultivatory possession since samwat year 2011. Since the land of even said Min 4 of khasra no.323 itself was big and some other persons were also in possession of the land of Min 4, some wrong entries have been made by the revenue officers in the revenue record. According to the plaintiffs, their cultivation on the land measuring 25 bighas 12 biswas was duly recorded in some of the khasra girdawaries which records cultivation only. The plaintiffs came to know that their names have not been entered in the jamabandi which is record of right, then the plaintiffs filed the suit for declaration and injunction so that they may get their khatedari right declared through the court of law.

Defendants Chandu and Nanak, who are respondents in this writ petition, submitted written statement and as per the averments of the defendants, the defendant Chandu in his written statement stated that he was in possession of 50 bighas of land of 4 Min and he did not cultivate 10 bighas land out of that 50 bighas land and in samwat year 2014, the plaintiffs encroached upon

defendant Chandu's 10 bighas land. Defendant Chandu further pleaded that by collusion, the plaintiffs got their names entered in the khasra girdawari of the said land of defendant Chandu. Defendant also took plea that the land was jagir land earlier and the defendant took this land from Jagirdar for cultivating. The pleadings of defendant Chandu were some what vague in view of the fact that at some places, it is mentioned that defendant Chandu surrendered 10 bighas of total land. It is also stated that Chandu filed a suit for eviction of the plaintiffs but it appears that in his statement before the trial court, he admitted that he did not file any suit for possession against the plaintiffs. Defendant Nanak also stated that some of his land has been encroached upon the plaintiffs.

In the trial court, the plaintiffs produced 5 witnesses and also produced copies of khasra girdawaries as well as one map alleged to have been prepared in the year 1961 by the Patwari in pursuance of the order passed by the Tehsildar wherein the possession of the plaintiffs and defendants have separately been shown. Both the defendants gave their statements and produced one witness only. The defendants also produced copies of khasra girdawaries to show their possession.

Initially, the trial court decreed the suit of the plaintiffs for whole of land of 25 bighas 12 biswas by

judgment and decree dated 12.3.1968. Being aggrieved against the judgment and decree dated 12.3.1968, the appeal was preferred which was allowed by the Revenue Appellate Authority and the Revenue Appellate Authority set aside the judgment and decree of the trial court and remanded the matter back to the trial court for deciding the suit after examining the effect of Section 19 of the Rajasthan Tenancy Act also.

After remand, in the trial court, the plaintiff gave his statement and the defendant did not choose to produce any more witness. The trial court dismissed the suit of the plaintiffs vide judgment dated 18.1.1978. Aggrieved against the judgment and decree of the trial court dated 18.1.1978, the plaintiffs preferred regular first appeal before the Revenue Appellate Authority again. The Revenue Appellate Authority in detail judgment held the plaintiffs to be in possession of the land of Khasra No.4 Min but on 15 bighas of land only. The first appellate court vide judgment and decree dated 21.12.1982 declared the plaintiffs to be khatedar tenants of the land of Khasra No.4 Min measuring 15 bighas.

Aggrieved against the judgment and decree of the Revenue Appellate Authority, two appeals were preferred – one by plaintiffs Net Ram & Madan Chand and another by defendant no.2 Nanak. It appears that the defendant no.1 Chandu did not choose to challenge the judgment

and decree of the Revenue Appellate Authority dated 21.12.1982 declaring the plaintiffs to be khatedar tenants of land measuring 15 bighas.

The Board of Revenue discarded the site map prepared by the patwari in the year 1961 (Ex.P/1) showing the possession of the plaintiffs and defendants on separate pieces of land of khasra no.4 Min. The Board of Revenue also raised doubt about the genuineness of the jamabandi of samwat year 2011 to 2014 on the ground that it was produced belatedly, in the year 1977. The Board of Revenue also considered Ex.D/1, D/2 and D/3 produced by the defendants wherein Chandu was shown to be khatedar tenant of 40 bighas of land in khasra girdawaries for samwat year 2012 and 2014. The cultivation of plaintiffs Net Ram and Madan Chand over 8 bighas of land was also shown in samwat year 2014. In samwat year 2017 to 2020, the cultivation of plaintiffs Net Ram and Madan Chand was shown over 10 bighas 10 biswas and the same was the position in the samwat year 2021. The Board of Revenue observed that possession of Net Ram and Madan Chand appears to be permissive possession as the permission might have been granted by Chandu to occupy the land. On this basis, the Board of Revenue reached to the conclusion that the plaintiffs are not sub-tenants even in 10 bighas of land of khasra no.4 Min and, therefore, the Board of Revenue declared that the plaintiffs could not be

declared khatedari tenant of 10 bighas of land even under Section 19 of the Rajasthan Tenancy Act.

In the background of these facts, this matter has come up before this Court.

Learned counsel for the petitioner vehemently submitted that the Board of Revenue has committed serious error of law by discarding documentary evidence which was considered and relied upon by the first appellate court. It is also submitted that the plaintiffs produced witnesses who are neighbours whereas the defendants could not produce any independent witness and only one witness produced by the defendants was not even neighbour. In view of the above reasons and in view of the fact that the plaintiffs were in possession of the agricultural land and their names have been entered in the khasra girdawaries, therefore, the plaintiffs' possession over the land in dispute is fully proved and rather say, it is an admitted fact as admitted by the defendants unequivocally though by saying that the plaintiffs encroached upon the disputed land. In that event, presumption about the plaintiffs' possession can be drawn backward also. Defendant Chandu in the pleadings though pleaded that he filed suit for possession against the plaintiffs for same land but in his statement, he admitted that he did not file any suit or

lodged any complaint of trespass against the plaintiffs, then in that situation, the plaintiffs filing of present suit only prompted the defendants to take a plea that the plaintiffs encroached upon the defendants' land. It is also submitted that this is not a case where the State is claiming any dispossession of the plaintiffs and/or defendants. When the land holder – State has no objection if land remains in possession of the plaintiffs, then the plaintiffs' right should have been examined only against the defendants, who now cannot take possession from the plaintiffs and State is not seeking eviction of the plaintiffs. Further, the State has not challenged the plaintiffs' right anywhere.

Learned counsel for the petitioners further submitted that the decree was passed by the Revenue Appellate Authority in favour of the plaintiffs for land measuring 15 bighas against both defendants Chandu and Nanak. Defendant Chandu did not choose to prefer appeal before the Board of Revenue. Then so far as any claim of Chandu over any land in khasra no.4 Min over which there is an admitted possession of the plaintiffs, the Board of Revenue could not have set aside the judgment and decree of the first appellate court. It is also submitted that Nanak also admitted that the plaintiffs are in possession of the part of the land, then in that situation also, the fact of the

plaintiffs' possession is fully corroborated by khasra girdawari and that the State is not saying that the plaintiffs are trespassers over the land in dispute, then by now by lapse of time, even against the State, the plaintiffs' right culminated into khatedari rights.

Learned counsel for the private respondent Chandu vehemently submitted that the Board of Revenue carefully considered all the documents as well as evidence. It is also submitted that the khatedari right can accrue under Section 15 or Section 19 of the Rajasthan Tenancy Act and for that the claimant is required to prove certain basic ingredients like his entry in the land as tenant before commencement of the Rajasthan Tenancy Act, 1955 and is continuing in possession of the land as such on the date of commencement of the Rajasthan Tenancy Act, 1955. For claiming any khatedari right being a sub-tenant under Section 19, he has to prove that his entry is as tenant of khudkast and if there is no such entry in record, he can prove that he is tenant of khudkast of land. In this case, all these material facts are missing.

Learned counsel for respondent Chandu further pointed out that the jamabandies produced by the plaintiffs are forged one as well as illegal. The Board of Revenue clearly observed that the jamabandi was produced after so many years and that jamabandi was

made on the basis of opinion of Majma Khas. Therefore, recording of the plaintiffs in the jamabandi is of no consequence, therefore, the jamabandi is not relevant. Learned counsel for the respondents, however, admitted that in the statement, Chandu admitted that he did not file any suit for eviction of the plaintiffs. It is also submitted that the Board of Revenue once has decided the second appeal in favour of the defendant, then this Court may not interfere in writ jurisdiction as it is not an appellate jurisdiction.

I considered the submission of learned counsel for the parties and perused the record.

It appears that the Board of Revenue misdirected itself and before that even the first appellate court when remanded the matter misdirected itself by directing the trial court to examine the claim of the plaintiffs in the light of Section 19 of the Rajasthan tenancy Act. It appears from the pleadings of both the parties that so far as the land of khasra no.4 Min is concerned, over it, the plaintiffs and defendants alone claim possession over a specific area. The State nowhere stated that none of the persons i.e. plaintiffs or defendants were entitled to keep the possession of the agricultural land. The State is landholder. The defendant's own contention was that they were in possession of bigger portion of the land but out of

that, the plaintiffs encroached upon some of the land. In that situation, the plaintiffs' possession over the land corroborated by khasra girdawari clearly proves that the plaintiffs were in cultivatory possession of the land of khasra no.4 Min. The dispute was with respect to the area over which the plaintiffs were in possession and the dispute was with respect to the area from which the defendants were forcibly dispossession of the plaintiffs. In that situation, the evidence of the parties clearly reveal that the plaintiffs produced independent witnesses who are admittedly neighbours. The Board of Revenue did not consider the evidence of these witnesses which proved possession of the plaintiffs. Apart from the fact that the Board of Revenue did not consider that the plaintiffs are in possession of khasra no.4 Min. the Board of Revenue proceeded in the matter as though the suit has been filed for declaration of khatedari right over the agricultural land “of the State”. There may be cases where two parties may try to obtain decree of declaration of khatedari rights in agricultural land of State so as to use it against the State but in the present case, none of the above fact is available on record as the State nowhere says that any of the persons, the plaintiffs or defendants, are trespassers over the government land and were not entitled to khatedari right. The land will remain either in the

khatedari of the defendant or the plaintiff, then in that situation, the person who was in possession since 1961 as per the report of patwari prepared by the order of Tehsildar could not have been ignored. The defendants failed to prove that how the report of the patwari showing the possession of the defendants and plaintiffs on separate pieces of land was not reliable and could not be believed.

Section 15 of the Rajasthan Tenancy Act was enacted only to give khatedari rights to those persons who were tenant at the time of commencement of the Rajasthan Tenancy Act. This specific provision had not been enacted only for those persons whose names have already been entered in the record of rights. Because by getting the name entered into record of right, in pursuance of the lawful order one becomes khatedar tenant. Those persons whose names have not been entered in the revenue record like record of right and who otherwise proves that they were occupying the land as tenant can get declaration of their khatedari rights in agricultural land by filing suit under Section 15 of the Rajasthan Tenancy Act, 2955. In this case, when the plaintiffs' possession over part of the land of khasra no.4 Min was never objected by the landholder – State, then further entry of their name in khasra girdawari showing their cultivatory possession was in the facts of this case, and in view of the stand taken by the

defendants themselves was sufficient to treat the plaintiffs' possession as of tenant and to declare them khatedar tenant under Section 15(1) of the Rajasthan Tenancy Act. Section 19 could not have been employed by the first appellate court and there was no need of remanding the matter to the trial court. Be it as it may be, since the order of remand was not challenged by any of the parties, therefore, that order cannot be set aside in this writ petition but that will not affect adversely to the plaintiffs in getting declaration under Section 15 of the Rajasthan Tenancy Act, 1955 under which the suit was filed by the plaintiffs. As stated above, from the facts mentioned, in view of the oral evidence and documentary evidence, the plaintiffs' cultivatory possession over khasra no.4 min is fully proved and the Board of Revenue on misconception of law rejected the plaintiffs' claim of khatedari over the land of khasra no.4 Min.

The Board of Revenue further committed error of law by drawing wrong inference and drawing a presumption that the plaintiffs might have been given permission to occupy the land of Chandu and that presumption is contrary to the admission of the defendant that he never gave permission to the plaintiffs to occupy the land but his case is that the plaintiffs' trespassed over this land. The same was position of Nanak that the plaintiffs encroached upon

the land. In view of the above facts, one important fact which was missed by the Board of Revenue was that the defendants only took their plea of encroachment by the plaintiffs when the plaintiffs filed the suit for declaration of khatedari right and for injunction. In this, important aspect was ignored by the Board of Revenue that even when the suit for declaration of khatedari right and injunction was filed by the plaintiffs in the year 1956, the defendants did not choose to take any step to take possession back from the plaintiffs, then the defendants' contention that the plaintiffs dispossessed the defendants from part of their land cannot be believed.

The Board of Revenue's reasons given for discarding the jamabandi of samwat year 2011 to 2014 was that it was fraudulently made, then in that situation, there should have been a specific plea of the fabricating the document and it could have been raised by the defendants and the defendants could have produced the copy of another jamabandi to show that that was not the correct copy of the jamabandi as the original record is kept by the government authorities. The Board of Revenue's rejection of site inspection report is also without any reason. It is true that mere on the basis of possession, khatedari rights cannot be claimed but the plaintiffs never claimed their

khatedari rights over the land in dispute merely on the basis of the report prepared by the patwari in the year 1961. That was a piece of evidence to prove the possession of the plaintiffs in the year 1961, the Board of Revenue was under misconception that the plaintiffs' basis of title or khatedari was the site map prepared by the patwari. The defendants failed to explain why that report could not have been believed by the courts below.

In view of the above reasons, next remains is that for how much land, the plaintiffs were entitled to declaration of their khatedari right. It appears from the reasons given by the first appellate court in detail that the plaintiffs could prove their possession over the land of 15 bighas and could not prove their possession on entire 25 bighas. At this place, it may not be out of place to mention that on agricultural land, cultivation may be on a shorter area than in possession of the occupant because of the reason that the cultivation is dependent upon the factors like, availability of water or even expected rain and also on the means of the cultivator but since the first appellate court carefully considered the facts of the case and held that the plaintiffs were khatedars of 15 bighas land, the above finding deserves to be maintained.

In view of the above discussion, this writ petition is allowed, the judgment and decree of the Board of Revenue dated 6.6.1990 is set aside and the judgment and decree of the Revenue Appellate Authority dated 21.12.1982 is restored. No order as to costs.

(PRAKASH TATIA), J.

S.Phophaliya